?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%Dated: 19.02.2019
Reserved on : 08.02.2019
Delivered on : 19.02.2019
*CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
+W.P.(MD)No.840 of 2012
and
M.P(MD).No.1 of 2012

#1.The Executive Engineer,
TWAD Board, RWS Division,
District Collectorate Complex,
Ramnad.

2.The Executive Engineer,
TWAD Board,
Maintenance Division,
Madurai.

3.The Superintendent Engineer,
TWAD Board,
Sivaganga. ... Petitioners

Vs
$1.The Presiding Officer,
Labour Court,
Madurai.

2.R.Muniaraj ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order bearing I.D.No.113 of 2002 dated 19.04.2011 passed by the first respondent and quash the same.
!For Petitioners : Mr.Porkodi Karnan
^For R2 : Mr.S.M.Mohan Gandhi

:ORDER

Heard the learned counsel on either side.

2. Tamil Nadu Water Supply and Drainage Board is the writ petitioner herein. They question the award dated 19.04.2011 made in I.D.No.113 of 2002 on the file of the Labour Court, Madurai. The said industrial dispute was raised by the second respondent herein. The case of the second respondent is that he was employed on daily wages basis by Tamil Nadu Water Supply and Drainage Board as Pump Operator from 01.09.1995 till 30.06.1997. He was denied employment with effect from 30.06.1997. The Board did not follow the procedure laid down in Section 25F of the Industrial Dispute Act, 1947. He

was representing to the various official of the Tamil Nadu Water Supply and Drainage Board, some of whom, recommended his case for regularisation. Since the Management of the Board was unresponsive, he raised an industrial dispute in the year 2002. Since conciliation failed, he had to move the Labour Court, which took up the case as I.D.No.113 of 2002. Before the Labour Court, the second respondent herein examined himself as a witness. He also marked Ex.W1 to Ex.W.7. On the side of the Tamil Nadu Water Supply and Drainage Board no evidence was adduced. The Labour Court by the impugned award dated 19.04.2011 held that denial of employment to the workman was not justified and directed his reinstatement with continuity of service. It however denied backwages. The said award is under challenge in this writ petition.

3. The learned counsel appearing for the Tamil Nadu Water Supply and Drainage Board reiterated the contentions set out in the affidavit filed in support of this writ petition. The learned counsel appearing for the second respondent/workman wanted this Court to sustain the award passed by the Labour Court.

4. I carefully considered the rival contentions and also the materials on record. It is not in dispute that the second respondent herein was employed on daily wages basis as Pump Operator from 01.09.1995 to 30.06.1997. The stand of the Tamil Nadu Water Supply and Drainage Board is that the workman was originally employed in connection with Kolunthurai Combined Water Supply Scheme and that since the said project was concluded, he was disengaged. The Board had contended that the workman was not employed for a period of 240 days in one year. But as the Labour Court rightly held, this defence was not established. The second respondent was after all a workman and therefore, he can only make a claim that he was employed for more than 240 days during the period in question.

5. When there is no dispute that he was employed from 01.09.1995 till 30.06.1997, it was incumbent on the part of the Management to have adduced evidence to show that during this period, the workman did not put in service for a period of 240 days in one year. As already point out, the Management did not examine any official. It did not marked any document. Hence, the Labour Court rightly came to the conclusion that on account of non production of evidence by the Management, it would have to draw adverse inference that the stand of the workman was not rebutted.

Section 2(s) of the Industrial Dispute Act defines a workman as follows:~
?Workman? means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharges or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person~
(i) who is subject to the Air Force Act, 1950(45 of 1950), or the Army

Act 1950(46 of 1950), or the Navy Act, 1957 (62 of 1957); or
(ii)who is employed in the police service or as an officer or other employee of a prison, or
(iii) who is employed mainly in a managerial or administrative capacity, or
(iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.)?

6. The second respondent herein definitely falls within that expression. Therefore, the Management ought to have followed the procedure laid down in Section 25F of the Industrial Dispute Act. In this case, the procedure was not followed. Hence, the Labour Court was justified in directing the Management to take back the second respondent and give employment. But then admittedly the second respondent was not holding any substantive post. Therefore, while rightly negativing backwages, the Labour Court should also have held that the question of awarding continuity of service will not arise. To that extent the award of the Labour Court has to be interfered with.
7. The writ petitioner Tamil Nadu Water Supply and Drainage Board is directed to take back the second respondent herein in the same position, which he was enjoying originally. The Management shall offer work on the same terms wherever it is available. The second respondent cannot insist that he should be employed only in a particular place or site or project. If the second respondent is not willing to accept the offer made by the Management, the Management can inform the second respondent accordingly and thereafter, the relationship between two would come to an end. If the second respondent accepts the offer made by the Management the second respondent will continue to be engaged as a daily wager and the relationship between the parties will be governed by the provisions of the Industrial Dispute Act, 1947. It appears that during the pendency of this writ petition, the petitioner did not take back the second respondent in service and it was only paying him his last drawn wages. The same shall not be recovered.
8. Accordingly, this Writ Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

To
The Presiding Officer,
Labour Court,
Madurai.